IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 173 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Petitioner(s)

Versus

ARVIND JEWELLERS - Respondent(s)

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Appearance :

MR MANISH R BHATT for Petitioner No(s).: 1.

MR RK PATEL for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 06/07/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. Following two questions have been referred by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' under Section 256(2) of the Income Tax Act, 1961 (the Act), at the instance of Commissioner of Income Tax.

1. The Assessment Year is 1981-82 and the relevant accounting period is Samvant Year 2036. The assessee, a partnership firm, sought registration in terms of provisions of Section 185 of the Act. The Assessing Officer passed an order on 17.11.1983 granting registration to the assessee firm in the following words.

1. The Commissioner of Income Tax (Investigation), Gujarat (hereinafter referred to as the C.I.T.) initiated action under Section 263 of the Act by issuing show cause notice on 04.06.1984. The assessee filed reply to the show cause notice on 09.07.1984 and 22.07.1984. However, the C.I.T. for the reasons stated in his order dated 23.11.1984 rejected the explanation of the assessee and held that the order made by the Assessing Officer under Section 185(1)(a) of the Act granting registration to the firm was erroneous and prejudicial to the interests of revenue. As a consequence, he set aside the order with a direction “to pass fresh order according to law after carrying out necessary investigation with regard to the genuineness of the firm.”

1. The assessee carried the matter in appeal before the Tribunal. The Tribunal allowed the appeal vide its order dated 19.09.1986 holding that the order made by the C.I.T. was bad in law. That C.I.T. had referred to only certain questions out of the statement recorded of the partners to draw the inference that the firm may not be genuine. In other words, according to Tribunal, the C.I.T. had doubted the genuineness of the firm by reading the statement of the partners in a truncated manner. The Tribunal has held that a document has to be read as a whole in order to decide its importance instead of picking up answers to one or two questions, which may favour one party or the other. The Tribunal has further found on reading the various statements of the partners that when the said docuements are read as a whole, it was difficult to concur with the view taken by the C.I.T. while initiating proceedings under Section 263 of the Act.

1. The Tribunal has further found that the basis for initiation of proceedings under Section 263 of the Act appeared to be the factum of a search conducted under Section 132 of the Act at the premises of the firm and the partners. Finally, the Tribunal finds “We find from the material already on record that the I.T.O. had, in fact, made proper investigation before granting registration u/S. 185(1)(a) of the Act.”

1. It is this order which is assailed by the Ld. Standing Counsel for the revenue, Ms. M.M. Bhatt.

1. It was submitted that the C.I.T. was not satisfied with the answers given by the partners as could be seen from the reproduction in the order under Section 263 of the Act, and hence, he initiated action under the said Section holding the order granting registration to be erroneous and prejudicial to the interests of revenue. According to her, no prejudice was caused to the assessee considering the fact that the C.I.T. had merely set aside the order with a

direction to pass fresh order after carrying out necessary investigation and the Tribunal had wrongly interfered in such an order, which per se was an innocuous order.

1. Mr. R.K. Patel, Ld. Advocate appearing on behalf of the respondent – asseseee submitted that there was no error in the order of Tribunal and Tribunal had recorded various finding of fact, which were not shown to be incorrect in any manner.

1. The true scope of the powers of C.I.T. under Section 263 of the Act is defined by Apex Court in the case of MALABAR INDUSTRIAL CO. LTD. V/S. COMMISSIONER OF INCOME TAX reported in (2000) 243 ITR 83. While explaining the phrase "Prejudicial to the interests of the revenue", it is stated that the order made by the Assessing Authority cannot be treated as prejudicial to the interests of the revenue when an officer has adopted one of the courses permissible in law, or where two views are possible and the officer has taken one view with which, the C.I.T. does not agree. That in such circumstances, apart from the order not being prejudicial to the interests of revenue, it cannot be treated as an erroneous order also, unless the view taken by the Assessing Officer is unsustainable in law.

1. Applying the aforesaid tests to the facts found by the Tribunal it is not possible to agree with the contention raised by the revenue. There is no infirmity in the order of the Tribunal, which would enable this Court to interfere. As to whether a firm is genuine or not is primarily a question of fact. Similarly, as to what inference of facts should be drawn from the facts available on record would also be a question of fact. It is not even the case of revenue, as even the C.I.T. does not state in his order under Section 263 of the Act, that on the same set of evidence, view adopted by the Assessing Officer was not a possible view. The C.I.T. also does not state that no investigation has been carried out by the Assessing Officer. In fact, when one reads the entire order of C.I.T., there is no whisper about the order granting registration being erroneous in any

manner, and this is a pre-requisite condition for exercise of jurisdiction under Section 263 of the Act. Even if one infers that, that was said by the C.I.T., yet as found by the Tribunal on reading of the statements and taking overall view of the matter, it was not possible to doubt the genuineness of the firm. The finding of fact recorded by the Tribunal from the material on record that the Assessing Officer had made proper investigation before granting registration has not been shown to be incorrect in any manner whatsoever.

1. As can be seen from the order under Section 185(1)(a) of the Act extracted hereinbefore, the Assessing Officer has taken into consideration the fact that all the requisite formalities as laid down in the Act have been fulfilled by the firm, and it is further found that the firm was genuine. In the circumstances, at the highest, it would amount to taking one view from the material available on record, with which, the C.I.T. does not agree and this by itself, as held by the Apex Court, cannot constitute a valid reason for exercise of jurisdiction under Section 263 of the Act.

1. Therefore, both on facts and in law, it is not possible to hold that the impugned order of Tribunal requires any interference. The Tribunal has rightly held that the C.I.T. could not have exercised powers under Section 263 of the Act.

1. In So far as the question no.2 is concerned, the same proceeds on an incorrect presumption that the C.I.T. has recorded a satisfaction to the effect that the registration was granted by the Assessing Officer without examining the genuineness of the firm. As already noticed hereinbefore, the Assessing Officer has categorically recorded that the firm was genuine and the Tribunal has found that from the material available on record such finding was rightly arrived at by the Assessing Officer after making proper investigation.

1. In the result, both the questions are answered in the affirmative i.e. in favour of the assessee and against the revenue. The Tribunal was justisfied in cancelling the order made by the C.I.T. under Section 263 of the Act.

1. Reference stands disposed of accordingly with no order as to costs.

(D.A.MEHTA, J.)

(H.N.DEVANI, J.)

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